IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2790 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAJANRAO TULSIRAM GOLAIT - Petitioner(s)
Versus
GENERAL MANAGER & 2 - Respondent(s)

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Appearance :
MS KJ BRAHMBHATT for Petitioner(s) : 1,
MR SM MAZGAONKAR for Respondent(s) : 1 - 2.
MR MG NAGARKAR for Respondent(s) : 1 - 2.
MR VIPUL MISTRY, ASST. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners (now the heirs of the original petitioner) have prayed for an

appropriate writ, direction and/or order directing the respondents to consider the petitioner for the pensionary benefits and to fix and pay pension to the petitioner regularly every month.

2. It is the case on behalf of the petitioners that the original petitioner was working as a permanent driver with the respondents and has retired on 1-8-1985 after putting in long continuous service of about 30 years without break. It is the contention on behalf of the original petitioner that his case is not considered for pension scheme though he had filled up the requisite forms opting for the pension scheme sanctioned by the Municipal Corporation by resolution No.170 dated 26-6-1984. It is submitted that as the petitioner was not given the benefit of pension scheme, the petitioner has served a legal notice dated 25-1-1996 to the respondents. However, in spite of that, the petitioner has not been given the benefit of pension scheme introduced by the respondents.

3. Petition is opposed by filing the affidavit-in-reply on behalf of the respondent Corporation. It is submitted that the petitioner has failed to exercise the option within the time limit allowed by the Corporation and he has failed even to take advantage of the extended time limit for exercising such option. It is further submitted that the intension of the Corporation in extending the date of exercising option upto 2-7-1991 was to see that all those who

were in service on 1-1-1983 but retired before the date of introduction of the pension scheme should get an opportunity to have second thoughts, and to opt for pension scheme, if they so desired, within the extended time limit. It is further submitted in the reply that the petitioner has not exercised any option within the time limit so prescribed, however, for the first time made a grievance somewhere in September 1993 when he alleges to have made an application in the form of reminder to the Corporation making grievance that he was not admitted to the pension scheme though he had applied for the same. It is also further submitted that if the petitioner had opted for pension scheme within the time limit extended by the Corporation and also taken necessary steps, to pay back the emoloyer's contribution, there is no reason why the administration should exclude him from the pension scheme, more particularly when the benefit has been given to all those employees, who have exercised their option. It is also further submitted that in fact, the amount of gratuity has already been made to the petitioner.

4. Heard, the learned advocates appearing on behalf of the parties.

5. Learned counsel appearing for the petitioner has relied upon the documents at Exh-32 to 34 in support of their submission that the petitioner had exercised his option in favour of the pension scheme. However,

on considering the documents at page 32 to 34, date is not mentioned and the learned advocate appearing on behalf of the petitioner is not in a position to satisfy the Court when the option was exercised and the necessary application was given. It is the specific case on behalf of the respondent Corporation that prior to 1993 and even before the cut off date, there is no option exercised by the petitioner. Under the circumstances and in absence of any satisfactory proof with regard to exercise of option by the petitioner prior to the relevant date, the petitioner is not entitled to any relief as prayed for, more particularly, the benefit of the pension scheme. When it is not proved that the petitioner had exercised the option before the relevant date, no relief can be granted in favour of the petitioner directing the respondent to grant the benefit of pension scheme to the original petitioner. So far as the grievance made by the original petitioner with regard to the gratuity amount is concerned, Ms Brahmbhatt, learned advocate appearing on behalf of the petitioner has shown the relevant receipts singed by the original petitioner with regard to the payment of gratuity amount. Under the circumstances, no order is required to be passed with regard to amount of gratuity, as it is already paid.

6. For the reasons stated above petition fails and is dismissed accordingly. No costs.

(M.R. Shah, J.)

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